Supreme Court, U.S.
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No. 87-434

In The

Supreme Court of the United States

October Term, 1987

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STATE OF CONNECTICUT

vs.

JEFFREY MITCHELL

STATE OF CONNECTICUT

vs.

HOWARD TINNEY, JR.

—o—

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

—o—

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

—o—

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QUESTIONS PRESENTED

I. DID THE CONNECTICUT SUPREME COURT ERR IN HOLDING THAT A ONE-ON-ONE SHOW-UP AT A HOSPITAL WAS UNNECESSARILY AND IMPERMISSIBLY SUGGESTIVE WHEN THE FOURTEEN-YEAR-OLD ALLEGED VICTIM WAS NOT CONFINED TO THE HOSPITAL AND IMMEDIATELY AFTER THE SHOW-UP SHE WAS TAKEN BY THE POLICE TO VIEW A MOTOR VEHICLE OPERATED BY ONE OF THE SUSPECTS AND THEN TO THE POLICE STATION TO GIVE A WRITTEN STATEMENT?

II. DID THE CONNECTICUT SUPREME COURT ERR IN UPHOLDING THE TRIAL COURT'S FACT-BASED DECISION THAT THERE WERE NOT SUFFICIENT INDICIA OF RELIABILITY IN THE IDENTIFICATION BY THE ALLEGED VICTIM TO ALLOW AN IN-COURT IDENTIFICATION OR ANY EVIDENCE OF THE IMPERMISSIBLE AND UNNECESSARY IDENTIFICATION PROCEDURE?

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COUNTERSTATEMENT OF THE CASE

The trial court, at pretrial hearings, granted a motion by the defendants to disallow any in-court identification of the defendants by the fourteen-year-old alleged victim of a sexual assault. The Appellate Court of the State of Connecticut reversed the trial court on this issue as well as on several other motions filed by the defendant which the trial court had granted. The Connecticut Supreme Court reversed the Appellate Court on the identification issue and upheld the Appellate Court on all other isses.

The factual background of this case is fairly well set out by the State in its petition at pages four through seven of said petition. Said facts are also set out in greater detail in the opinion of the Connecticut Supreme Court (pages 3A-6A of the appendix to the State's petition).

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REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

I. THE DECISION BELOW IS CONSISTENT WITH THE DECISIONS OF THIS COURT.

A. The hospital show-up was unnecessarily suggestive based upon the particular facts of this case and the applicable decisions of this court.

Rule 17.1 of the Supreme Court rules sets out the reasons for which a review on a writ of certiorari will be granted. It requires that there be "special and important reasons" therefore, including where a state court of last resort has decided a case "in conflict with the applicable decisions of this Court.

The respondents respectfully submit that the decision by the Connecticut Supreme Court in this case is not in conflict with the applicable decisions of this court.

The petitioner seems to claim that this decision is in conflict with *Manson v. Brathwaite,* 432 U.S. 116 (1977) and its progeny. However, the Connecticut Supreme Court is quite clear in stating its reasons for holding that the hospital identification procedure was unnecessary and impermissible. The decision discussed *Brathwaite, Stovall v. Denno,* 388 U.S. 293 (1967) and the many Connecticut decisions subsequent to the aforementioned cases. The Connecticut Supreme Court stated at page 202 of its decision (page 16A of the appendix to the petitioner's writ) that the show-up was unnecessary because an alleged victim was transported by the police immediately thereafter to view a vehicle operated by one of the suspects and then was taken to the police station to give a statement.

The decision was not limited to, nor based upon, the finding that the fourteen year old was seriously injured or in immediate danger of death. The more important fact was that she was not required to stay in the hospital and was taken by the police for further investigation immediately after the show-up. The Connecticut Supreme Court concluded that a less-suggestive procedure could easily have been followed in view of these facts.

Since there is no dispute that the show up was impermissibly suggestive, the only issue before this court is whether or not it is unnecessary. The decision of the Connecticut Supreme Court is not in conflict with any decision of this Court in its conclusion that the show-up was unnecessary. The lower court decision was based

upon the facts of this particular case in accordance with the many decisions of the Connecticut Supreme Court and the applicable decisions of this Court.

B. The reliability decision of the lower courts was based upon the particular facts of this case and the applicable decisions of this court.

Just as the finding that the show-up was unnecessary was fact-based, the decision on the liability of the identification was also based upon the particular facts of this case. The Connecticut Supreme Court specifically referred to the trial court's ruling on the reliability issue and held that there was no reason to hold that the trial court's finding was erroneous. The State never asked for an articulation by the trial court on its reliability findings and those findings were not inconsistent with the areas of inquiry required by the multitude of State cases on this issue, all of which are consistent with those set out by the petitioner at page 19 of its brief. The requirements cited by the petitioner are exactly those required by the Connecticut Supreme Court in *State v. Guertin,* 190 Conn. 440 (1983).

The decision of the lower court is totally consistent with the applicable decisions of this Court and is based upon the particular facts of this case. There are no Constitutional rules at issue as far as reliability is concerned. The issue is strictly based upon fact in accordance with the decisions of this court.

Contrary to the opinion of the petitioner, neither the Connecticut Supreme Court nor the trial court ignored the factors enumerated at page 19 of the petition. The State just cannot accept the fact that both the trial court and the Supreme Court did not consider the evidence on re-

liability undisputed. As a matter of fact, the trial court considered the evidence presented by the State to be totally unreliable and the Connecticut Supreme Court found no reason to disagree with this conclusion. It is obvious from the mere fact that the reliability of the identifications was contested that the evidence was disputed.

II. THERE IS NO SPECIAL AND IMPORTANT REASON FOR GRANTING THIS WRIT AS THE CONSTITUTIONAL ISSUES HAVE BEEN DECIDED BY THIS COURT AND THE SPECIFIC ISSUES IN THIS CASE ARE BASED UPON THE FACTS OF THIS PARTICULAR CASE.

The petitioner is upset that its version of the facts was not accepted by the trial court or the Connecticut Supreme Court. It states at page 22 of its petition that "the result in the State courts in intolerable . . ." and that it ". . . make(s) one wonder whether we in fact live in a civilized society." The State in making this argument forgets the most basic Constitutional right of any citizen of this country, the right to be presumed innocent.

The trial court heard several days of testimony on the various motion before it. After the hearings were completed, the trial judge was not even convinced that a crime had been committed. The alleged victim admitted that she lied to the police and told a story that was incredibly detailed sexually, although admittedly totally false. The trial court also concluded that the police officers gave information to the alleged victim after the suspects were arrested to make her second story more consistent with the arrest of the suspects.

As the petitioner states, there has been a tremendous injustice here, and that injustice has been committed upon the respondents. If the State is truly interested in correcting intolerable results and wondering what is happening to a civilized society, then the place to look for said corrections is at itself since it is the State that is acting uncivilized and intolerably in this matter.

There are no special issues here, Constitutional or otherwise, that have a national impact. The Connecticut Supreme Court merely applied the facts it had before it and those found by the trial court to the decisions of this Court and the Connecticut Supreme Court.

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CONCLUSION

The trial court and Connecticut Supreme Court decisions on the issues upon which the State is seeking certiorari are not inconsistent with any decisions of this court. The decision of the Connecticut Supreme Court applies the facts as found by the trial court to the law as set forth by this court and the Connecticut Supreme Court. Although legal considerations requested by the petitioner were followed by the lower courts. Just because the petitioner disagrees with the factual conclusions of the lower courts does not mean that those courts followed improper law. The petitioner's real disagreement is with the facts, not the law applied to said facts. That is not sufficient reason to compel review by this court. For the

aforementioned reasons, the respondents respectfully submit that the petition for a writ of certiorari be denied.

Respectfully submitted,

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